BAIL SLIP

The Appellant / Accused No.1 and 2 Viz.Sambasivam and Ravi were directed to be released on bail as per the order of this Court dated 8.9.1999 in Crl.M.P.No.7746/99.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

CRIMINAL APPEAL No.713 OF 1999

1.Sambasivam
2.Ravi ... Appellants[Accused Nos. 1 and 2].

Vs.

State, represented by
Deputy Superintendent of Police,
Mannarkudi ... Respondent [Complainant].

Criminal Appeal preferred under Section 374(2) Cr.P.C., as against the judgment of conviction and sentence dated 24.8.1999 rendered in Sessions Case No.105 of 1998 by the learned II Additional Sessions Judge (Protection of Civil Rights), Thanjavur.

For appellants : Mr.M.Arulselvam & V.Ramamurthy
For respondent : Mr.J.C.Durairaj, Govt.Advocate (crl.side)

JUDGMENT

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The accused No.1 and 2 in Sessions Case No.105 of 1998 on the file of the Court of II Additional Sessions Judge (Protection of Civil Rights), Thanjavur are the appellants.

2. Upon the complaint by P.W.1-Soundararajan, P.W.8-the Sub Inspector of Police registered a case in Cr.No.11/1996, under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act'), as per the FIR-Ex.P.4. Pursuant to the registration of the case, P.W.8 examined some witnesses, recorded

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the statements, then submitted the investigation report for further investigation to the Inspector of Police, who has been examined as P.W.9. When P.W.9 completed his investigation, by examining P.Ws.1 to 8, it was brought to his knowledge that this kind of case should be investigated by the Deputy Superintendent of Police and therefore, he submitted the files to the Deputy Superintendent of Police, who has been examined as P.W.10.

3. P.W.10, though examined the witnesses examined by P.Ws.8 and 9, has not recorded any independent statements. Then, obtaining the community certificates of the accused, as well as the alleged victim and after completing the investigation, when he re-assessed the materials, it brought to surface that all the accused, being the members of other caste, had intentionally insulted P.W.1, who belongs to Scheduled Caste community, that too, within public view. Therefore, he has laid a final report, leading to trial, in view of the fact, the accused denied the charges, which ended in acquittal of A.3 and conviction of A.1 and A.2 and sentencing them to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.1,000/=, in default to undergo further RI for three months each, which is challenged in this appeal by A.1 and A.2.

4. Heard Mr.M.Arulselvam, learned counsel for the appellants and Mr.J.C.Durairaj, learned Government Advocate (criminal side) for the respondent/State.

5. Mr.M.Arulselvam, the learned counsel appearing for the appellants would submit that the prosecution has miserably failed to prove

(i) that the alleged offence had taken place within public view that too, in order to intentionally insult or intimidate P.W.1, who belongs to Scheduled Caste;

(ii) that the inordinate delay, in preferring complaint, is not at all explained, which should create a doubt, as if the case is motivated, foisted falsely because of the admitted civil dispute;

(iii) that the evidence adduced to prove the insult, said to have been committed by the accused, also failed to serve the purpose, since they are not only self-contradictory, but also mutually destructive and this being the position, depending upon their evidence, convicting the appellants/A.1 and A.2 should be held an impossibility and that

(iv) a mandatory Rule viz. Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as 'the Rules') has not been followed in this case, which should lead to the only conclusion, that the entire proceedings is vitiated.

On the above points, elaborating the same, applying the provisions of law then and there, taking me through the evidence, in depth, a strong submission was made by the learned counsel for the appellants to give relief to the appellants, since this is a motivated case, which was also

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conceded by the trial Court to some extent, since A.3 was acquitted on the same evidence, holding it undependable.

6. The learned Government Advocate (criminal side), while responding to the above submissions, would submit that the oral evidence, tendered by the witnesses, is proof sufficient, in establishing the guilt of the accused and that since the investigation was done by P.W.10-the Deputy Superintendent of Police, question of violating Rule 7 of the Rules also does not arise and considering the above facts, the conviction, followed by sentence, imposed by the trial Court should receive the approval of this Court, concluding the appeal is not meritorious.

7. According to the prosecution, the incident had taken place on 22.7.1996 at about 6.00 a.m. The complaint was preferred by P.W.1 on 23.7.1996, as submitted by P.W.8, who received the complaint at 10.00 a.m. In the original complaint, there is no endorsement, which is made available usually, about the time of receipt of the complaint, though in the printed FIR, in the second column it is stated as '10.00 a.m.'. The complaint-Ex.P.1, as well as the printed FIR-Ex.P.4, reached the Court only on 25.7.1996 at about 11.30 a.m., thereby showing the inordinate delay, not only in registering the case ,but also in submitting the complaint and printed FIR to the Court concerned, for which no explanation is forth-coming. As observed by the Courts, since there is a possibility to foist this kind of cases, due to some enmity, easily, the delay should take its magnitude, if it is not explained. In this view, as rightly claimed by the learned counsel for the appellants, the benefit of doubt, about the genesis of the case, should be given to the accused. This being the position, the doubt, instead of being vanished, by further deep consideration, in my considered opinion, grown-up, further doubting the origin of the case.

8. Admittedly, P.W.1, who belongs to Scheduled Caste community, as seen from Ex.P.3, not challenged before me, was working as Special Tahsildar at Mannarkudi. Therefore, he should have acted as Executive Magistrate also. In this view, he must be aware of the effect of delay in preferring the complaint, when accusation is levelled against others. Therefore, if P.W.1 was the victim of caste discrimination or caste assault, because of the fact, he belongs to Scheduled Caste community, in the normal course, he should have reported the matter to police immediately and nothing would have prevented him in doing so, since no such prevention also pleaded. An attempt was made to say, that P.W.1 went to report to Mannarkudi Police Station, who refused to take the FIR, directing him to go to Nagapattinam. This averment is not available in Ex.P.1, which was addressed to the Inspector of Police, Nagapattinam. No one has been examined, to show that FIR was refused even on legal ground from the Mannarkudi Police Station. Therefore, believing the interested, uncorroborative oral evidence of P.W.1, it is not possible to say that the delay is explained or the delay should not be taken into consideration, considering the gravity of the offence or some thing like

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that.

9. The incident is said to have taken place at 6.00 a.m. on 22.7.1996. While preferring the complaint, in Ex.P.1, it seems, P.W.1 has stated that the incident had taken place at 9.00 a.m., but subsequently, the same was corrected as 6.00 a.m. In this context, we have to see the oral evidence of P.W.1.

10. P.W.1 would admit, during the cross-examination, that he preferred the complaint on the date of the incident itself between 11 and 12 hours, in writing, to Nagapatting Police Station, which is proved to be false by Ex.P.1, since in Ex.P.1 itself, he has stated that the complaint was given only on 23.7.1996. It is not only the case of P.W.1 but also the other witnesses that the complaint was preferred on the same day. Thus, there is indelible doubt, about the accusation levelled against the accused, since there is inconsistent evidence in complaining the matter to the police, for which, as per the basic principles of criminal jurisprudence, the benefit of doubt should be given to the accused, that too, considering the motive.

11. It is an admitted fact or it is the case of P.W.1 that the accused are residing as tenants, in the house belonging to his father-in-law. It is also admitted by P.W.1 that an eviction proceeding has been initiated against the first accused, to evict him from the premises, in R.C.O.P.No.5 of 1995. It is also the case of P.W.1, that the accused requested them to sell the house where they are residing, for which they refused, resulting strained relationship. It is also admitted by P.W.1, that in respect of the said property, the case is pending before the Civil Court. Thus, it is seen there is strong motive for P.W.1, to foist a false case against the accused, which is, unfortunately, taken otherwise by the trial Court, as if the accused should have scolded P.W.1, using the caste name, which appears to my mind, not a proper approach. If this motive is read, coupled with the delay, as well as the correction in Ex.P1, as well as inconsistent evidence available regarding the presentation of complaint, the irresistible conclusion that should be drawn by this Court must be, it must be a foisted, false case, with ulterior motive, probably, to evict the accused from the premises where they are living as tenants, which belong to the father-in-law of P.W.1. On that ground alone, I am not going to say that it is a false or foisted case, but there are other grounds also, which I will discuss hereunder.

12. Accused Nos.2 and 3 are the sons of the first accused. It seems, the third accused was the student at the time of the alleged incident and he was taking training in the Postal Training Centre, Perungudi near Madurai. It is proved, by unimpeachable evidence, by producing Exs.D1 to D4. and examining D.W.1 also that the third accused was not at all present at the time of the alleged incident in the village itself, which was accepted by the trial Court, not challenged and in this view, the third accused was acquitted. Despite the fact that the third accused was not at

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all present, P.W.1 emboldened to prefer the complaint and also asserted before the Court of law, that the third accused was also present at the time of the occurrence and insulted him, uttering his caste name etc., which would go to show the evil mind of P.W.1, in roping the entire family members as accused, thereby justifying the observation of the Courts that possibility of foisting of a false case, proved to be true also. In this view also, as said above, a doubt should arise, regarding the case of the prosecution, the benefit of which should go to the accused.

13. P.W.1, being the alleged victim, would state that when he went to the house of his father-in-law, in order to repair a wall, which was damaged, the accused (all) questioned him, saying that he should not come to the street of 'kallar', since he belongs to scheduled caste viz. 'Parappayil', further accusing, as if they are consuming decomposed beef etc. The incident had taken place, according to him, at 6.00 a.m., which is corrected in Ex.P.1, as said above. P.W.1 has not stated, whether any other persons were present, witnessing the same, except saying, the persons summoned by them to make repairs of the wall were present. From the oral evidence of P.W.1, it is not known, whether the incident had taken place within public view, since the evidence of P.W.1 is not clear, whether the incident had taken place in the street or elsewhere within the house, where there would not have any public view also. The evidence, given by P.Ws.5 and 6, also fails to inspire my confidence, since they are not certain about the incident, the further fact being, they also belong to the same caste, under the control of P.W.1, the then Tahsildar. Thus by going through the evidence also, I am unable to satisfy myself, that the accused should have scolded P.W.1, uttering the caste name etc.

14. Even assuming that there might have been an incident, next we have to see whether the case was properly investigated by the competent person, if not what is the result.

15. Rule 7(1) of the Rules reads:

> "An offence committed under the Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/Director-General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time."

16. A careful reading of the above Rule and its purpose would reveal, that an Investigating Officer has to be appointed to investigate this kind of cases by the State government/Director General of Police/Superintendent of Police, taking into account the past experience, sense of ability etc. of the officer and this is possible only if the individuals are considered separately. Rule does not say that all the Deputy Superintendents of Police are competent to investigate this kind of cases, irrespective of their experience, sense of ability etc. Therefore, in my considered

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opinion, a person, who has been named and appointed, considering his past experience and ability alone is competent to investigate this kind of cases, otherwise, the purpose of the Rule will not be served. If all the Deputy Superintendents of Police of the State are empowered, as observed by the trial Court, placing reliance upon some circular, which is not available for perusal, before me, then, there may not be any chance for the higher authorities to take into account the past experience, sense of ability and justice to perceive the implications of the case of the officer, which were considered so essential, to investigate this kind of cases, considering the sensitiveness and the caste discrimination prevailed or prevailing throughout, though we have crossed so many years from the date of independence. When the Rules framed under the Act, says how, by whom the case is to be investigated, I am of the view, the same cannot be nullified or overlooked, by issuing a circular, empowering all the Deputy Superintendents of Police, to investigate this kind of cases, forgetting or ignoring the purport of Rule 7, which is mandatory, not challenged. If it is to be taken, all the Deputy Superintendents of Police are empowered, the Rule need not say, past experience, sense of responsibility etc., simply it would have been stated "by the officer not below the rank of Deputy Superintendent of Police" in general form, which is not the import or purport of Rule 7, as read from its proper perspective.

17. The learned counsel for the appellants, inviting my attention to a decision of the Division Bench of the Andhra Pradesh High Court in VISWANADHULA CHITTIBABU vs. STATE OF A.P. (2002 (4) Andhra Law Times Reports 456), would submit that the investigation done by any person, not authorised under Rule 7 of the Rules, should be treated as prejudice caused to the accused, since Rule 7 is mandatory and not directory. It is observed in the above Ruling:

> "The Act was enacted in the year 1989, whereas the Rules were framed in the year 1995, under Section 23 of the said Act. There was a delay of about six years in framing the Rules. It has to be considered why the Government framed this Rule. According to our logic, the Government experienced that the Act is being misused and therefore, felt that under such Acts, the investigation has to be done by a responsible Senior Officer and therefore, they chose Dy.S.P. to make an investigation. This Rule does not provide that all Dy.S.Ps. can investigate into the matter but provides that the Dy.S.P., named by the State Government or Director General of Police or Superintendent of Police has to nominate and select a Dy.S.P., with integrity and experience to investigate into such offences, which will prevent the misuse of the Act, and therefore, the provision contained in Rule 7 of the said Rules has to be interpreted as mandatory. In some of the rulings cited, their Lordships held if there were procedural defects, the trial would not vitiate. The procedure means a procedure, which is adopted by the Court. When the

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investigation has to be done by a Police Officer not below the rank of Dy.S.P. under Rule 7 of the said Rules framed under Section 23 of the said Act, it has some meaning. It is not the procedural defect, it is inherent defect in making the investigation and that would vitiate the entire trial."
(emphasis supplied)

The said reasonings are legally sound and I should follow, as concluded by me in the previous paragraph.

18. The same view was taken by this Court also in H.THENMOZHI vs. INSPECTOR OF POLICE, P.R.C.UNIT, St.THOMAS MOUNT POLICE STATION, CHENNAI AND ANOTHER [(2006) 2 MLJ (Crl.) 463], wherein it is stated that the investigation done by the Inspector of Police vitiates the entire proceedings and the accused is entitled to an acquittal. In the case involved in the above decision, as seen from the judgment, the investigation has been done by the Inspector of Police and the same has been forwarded to the DSP, to investigate the matter further, probably considering the fact, the investigation by the Inspector of Police goes to the root of the matter. This Court, considering the above facts, took the view that the same would vitiate the entire proceedings, giving acquittal, which should be followed by me also, since I am in confirmity with the view expressed by the learned Judge.

19. The learned Government Advocate (criminal side) would submit that in this case, not only the Sub Inspector of Police and Inspector of Police have investigated the matter, but the investigation was also done by the DSP, viz. P.W.10 and therefore, it should be held, that there is no violation of the mandatory provisions of Rule 7. If P.W.10 had taken the investigation independently, dehorse the investigation, said to have been conducted by P.Ws.8 and 9, then, the argument advanced on the part of the respondent/State has to be accepted, but, it is not the case. In this context, we have to see what is "investigation".

20. As defined under Section 2(h) of the Code of Criminal Procedure, "investigation includes all the proceedings under this Code for the collection of evidence conducted by the police officer or by any person (other than Magistrate) who is authorised by a Magistrate in this behalf"

As seen from the entire reading of the Act, the procedure contemplated under the code of Criminal Procedure are applicable to the cases coming under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act also. The Code of Criminal Procedure mandates collection of evidence, while conducting the investigation by Police Officer or by any person authorised. In this case, the authorised person is the Deputy Superintendent of Police, who is to be named, here not named, though it is said P.W.10 had investigated the case. Even assuming that all the Deputy Superintendents of Police can investigate the case (which cannot be so), it is to be seen, whether P.W.10 had investigated the case.

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21. As early as in 1955 and in 1959, the Supreme Court had an occasion to consider the word 'investigation' in THE STATE OF MADHYA PRADESH vs. MUBARAK ALI (AIR 1959 SC 707). Referring the earlier decision. In paragraph No.7 it is held:

> "Under the Code "investigation consists generally of the following steps: (i) proceeding to the spot; (ii) ascertainment of the fact and the circumstance of the case; (iii) discovery and arrest of the suspected offender; (iv) collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial; and (v) formation of the opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under S.173."

22. It is reiterated once again in STATE OF BIHAR vs. P.P.SHARMA (1992 Supp. (1) SCC), wherein in paragraph No.39 it is held:

> "Investigation consists of diverse steps – (1) to proceed to the spot, (2) to ascertain the facts and circumstances of the case; (3) discovery and arrest of the suspected offender, (4) collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons including the accused and the reduction of their statements into writing if the officer thinks fit (Section 161 CrPC), (b) the search of places and seizure of things necessary for the investigation to be proceeded with for the trial (Section 165 CrPC etc.) and (c) recovery of the material objects or such of the information from the accused to discover, in consequence thereof, so much of information relating to discovery of facts to be proved."

Having the above principles in mind, we have to see, the role played by P.W.10.

23. Admittedly, P.W.10 has not gone even to the place of incident, in order to find out whether the incident should have taken place within the public view, which is the essential ingredient to attract Section 3(1) of the Act. He would state that the case was investigated by the Sub Inspector of Police and thereafter, having taken the case for further investigation, though he examined the witnesses, not recorded the statements, thereby showing, he has not applied his mind, while conducting the investigation, which is absolutely necessary, to fix the culpability of a person. He has also not assigned any reason, why he has not recorded separate statements, how he came to know that the accused had committed the offence etc. The mere fact that P.W.10 had obtained community certificates and filed the final report would not come within the meaning

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of 'investigation', as defined by the Code of Criminal Procedure, which is elaborated by the Supreme Court in the above said decisions. Thus, I should conclude there was no investigation at all in this case and P.W.10 took it as if it is an empty formality, which is not the intention of the legislature, while framing Rule 7 of the Rules.

24. In this case, admittedly, P.W.10 has not been appointed by the State Government or by any person authorised by the State Government, taking into account his experience, sense of ability, justice to perceive the implications of the case and therefore, the formal role, said to have been played by him, fails to attract Rule 7, thereby I should say, unhesitatingly, that there is a violation of mandatory provisions of Rule 7 and this violation caused prejudice to the accused, as ruled in the above decisions and therefore, the entire proceeding has to be held as vitiated, resulting the appellants/A.1 and A.2 are entitled to an acquittal. Unfortunately, the trial Court, not analysing the case properly and not taking into account the effect of Rule 7 and its purpose, placing reliance upon circular, which is also not available and forgetting the fact that the circular cannot override the mandatory provision of Rule, which is having statutory power, and in the circular also P.W.10 has not been appointed by name, convicted the appellants/A.1 and A.2, while acquitting A.3 on the same same evidence, which is not legally sound, manifested against the provisions and therefore, the same should be set aside. Hence, the appeal deserves acceptance, accepted.

In the result, the appeal is allowed. The conviction and sentence imposed against the appellants/accused in Sessions Case No.105 of 1998 by the learned II Additional Sessions Judge (Protection of Civil Rights), Thanjavur, dated 24.8.1999 are set aside. The appellants/A.1 and A.2 are found not guilty of the offences charged and accordingly they are acquitted. The fine amount, if any, paid by the appellants/A.1 and A.2 shall be refunded to them. The bail bonds of the appellants/A.1 and A.2 shall stand discharged.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

Rao

To
1.The II Additional Sessions Judge
(Protection of Civil Rights),
Thanjavur.

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2. -do- through the Principal Sessions Judge, Thanjavur.

3. Deputy Superintendent of Police,
   Mannarkudi

4.The Public Prosecutor,
   High Court, Madras.

+ 2 CCs to Mr. M.Arulselvan, Advocate SR NO 60633

Judgment in Crl.A.713/1999

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